The Cochin Tenancy Act (Amendment) Bill

Mr. C. V. Iyyu—*(cont.)*

Mr. Puthur Achyuta Menon *(Kattur):* Sir, I have very great pleasure to support the amendment to the Tenancy Act moved by the Hon'ble Mr. C. V. Iyyu. It is a well-known fact that it is one of the most important amendments that have ever been moved in this House. It was in 1090 Sir, that the first Tenancy Act was passed in our State. According to the Act of 1090, clause 2 (*g*) defines *michavaram* as follows.—

"*Michavaram*" means whatever is agreed to be paid to a landlord by a *kanam* tenant after deducting from the *pattam* the interest due on the *kanam.*

Later on our benevolent Government thought it fit to amend the provision of the Tenancy Act in the interests of the *kanam* tenants of the State and by a reference to the new Tenancy Act of 1113 we find the definition of *michavaram* as follows.—

"*Michavaram*" means the balance of money or produce or both accruing due periodically to the landlord after deducting from the *pattam* the interest due on the *kanam* amount and *puramkadam,* if any.

In the new Tenancy Act, Sir, there is a provision which is entirely new. I refer to Section 28 of the new Tenancy Act.

"In addition to the above amounts the *kanam* tenant shall pay a renewal fee of 27½ per cent of the *kanam* amount and 15 per cent of the *puramkadam,* if any."

Explanation 1.—For the purposes of this section, the term "renewal fee" includes all dues such as *Sakshiavakasam* and *opputhoosi* which are customarily payable on renewal.

Explanation 2.—The *kanam* amount mentioned in this section does not include the additional *kanam* amount levied under section 23 (*e*) of Act II of 1090.

Nothing in this section shall make the *kanam* tenant liable to pay as renewal fee anything more than 5 per cent of the *kanam* amount and *puramkadam,* if any, when there is no *michavaram* payable under the *kanam* to be renewed or it is less than 12½ per cent of the *pattam* fixed therein.

The last clause of section 28 is entirely new. The *kanam* tenants of the State thought that at least in some cases on account of the provision contained in the last clause of section 28, they are going to get some benefit regarding renewal fee. But unfortunately

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for them, there were one or two recent rulings of the Highest Tribunal of our State. The Diwan Peishkar was saying last time when he opposed the Bill, that only after an interpretation is made by the Highest Tribunal there is any justification for bringing any amendment. In 6 Cochin Law Journal 499, the Highest Tribunal consisting of their Lordships, JJ. Narayana Ayyar and Thomas Manjooran held that at least in the case where stipulation is to pay the tax to the *jenmi*, it must be considered for the purposes of last clause of section 28, tax must form part of the "*Michavaram*". They held that the conjoint effect of the definition of "*pattam*" and "*michavaram*" in the Tenancy Act of 1113 would be to include Government Tax also in the term *michavaram* when it is definitely provided by the contract of tenancy, that it must be directly paid to the *jenmi*. But unfortunately, Sir, it did not end there. Their Lordships went a step further and even though not necessary for the purposes of decision of that case, held that on principle, when the tax is to be paid to the Government directly, that must also be considered as part of the *michavaram*, because the tenant is already doing his obligations towards the *jenmi*. The principle opened the eyes of the *kanam* tenants of the State.

In 7 Cochin Law Journal also, the principle laid down in 6 Cochin Law Journal was followed. So it has become clear that the *kanam* tenants are not going to get any more, the benefit of the last clause of section 28, because if that principle in the decision is to be applied, there will not be any benefit. The last clause of section 28 will remain as if a dead letter in the Tenancy Law.

Now, is such an interpretation possible, is the question to be considered by this House. I am not going to argue on the decision arrived at by the Highest Tribunal of this State. But from a reading of the enactment and the scheme underlying the Tenancy Act of 1113, it will be clear that it was not the intention of the Legislature to include tax in "*michavaram*". By a reading of the clause (*g*) to section 2 of the Act of 1090 and a reading of the present Act, it will be clear that it was never the intention of the Legislature to include the tax in the term "*michavaram*". In the previous Act, it was stated, as I said before, "*michavaram*" means whatever is agree d to be paid to a landlord by a *kanam* tenant after deducting from the *pattam* the interest due on the *kanam*. From the *pattam*, the interest on the *kanam* amount must be deducted and the balance is the *michavaram* according to that Act. According to the new Tenancy Act, the definition is " "*michavaram*" means the balance of money or produce or both accruing due periodically to the landlord after deducting from the *pattam* interest due on the *kanam* amount and

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puramkadam, if any." I stress the words "due periodically to the landlord". I ask the question, why this change was made in the new Tenancy Act? I ask again the question, is this tax something due periodically to the landlord? Or is it due periodically to the Government? I take the position, Sir, that when the new Tenancy Act was enacted, it was the intention of the Legislature to exclude the tax, otherwise the words "due periodically to the landlord" would have been practically omitted, because it was absent in the previous Act. Tax is to be paid on the due dates. It is not due to the landlord. It is not paid periodically. Therefore if the position taken now and if the decision arrived at now was the intention of the Legislature, there was no necessity to change the definition of "*michavaram*" in the new Act. The Legislature thought fit to amend the old section at least to give some relief to some people. It is on account of that these special words "due periodically to the landlord" are used in the definition of "*michavaram*".

And again coming to the Act, Sir, we find some curious phenomenon. In so many instances "*michavaram*" does not include tax. I refer, Sir, to the provisions of sections 27, 51 and 53 of the Act. According to section 27 of the new Act, there are certain payments to be made at the time of the renewal by the *kanam* tenant to the landlord. I shall read the section. "The following amounts shall be payable by the *kanam* tenant at the time of renewal:

(*a*) all arrears of *michavaram* and *puravaka* dues accruing for a period not exceeding 12 years;

(*b*) all arrears of Government or local taxes and other dues which he was bound to pay but which were paid by the landlord irrespective of the time when they were paid."

Clause (*a*) refers to the arrears of *michavaram* and clause (*b*) refers to the arrears of tax. No other proof is necessary to show that the Legislature had never intended to include "tax" in "*michavaram*". If that was the intention of the Legislature, I ask the pertinent question, why these two clauses were definitely put in the Act? If one includes the other, where is the necessity of distinctly stating both. At the time of renewal, there are two things to be paid—arrears of *michavaram* and arrears of government tax. If *michavaram* includes tax also, I ask, why these two clauses (*a*) and (*b*) are there. In sections 51 and 53 also, this distinction is kept inview. This definition is clearly stated there also. Now, this p int was also raised before our High Court, that it was on the ground when the tax was to be paid under the contract of tenancy to the

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landlord that the present definition is to be applied and when it is directly to be paid to the Government, these interpretations are possible. Here we are not going to discuss the merits of those interpretations.

After the principle has been laid down in that case, we have our own doubts regarding the principle whether it would work havoc on the *kanam* tenants in some other case where the contract is to pay directly to the Government. If that principle also is enacted in the form of a decision, it is patent that the *Kanam* tenant of this State is no more going to get any benefit. So by one case we thought the decision now arrived at, is not according to the intention of the Legislature as seen from the scheme of the Act. As it is intended to give some benefit to the *kanakudiyans* of the State, we have to interfere and the intention of the Legislature must be finally interpreted as to do some more justice to them and hence this amendment is tabled by my Hon'ble friend, Mr. Iyyu. I do admit that there is some defect in the drafting of the amendment. The effect of the amendment is only to state that tax does not form part of *michavaram*. I, with all force possible, therefore, support the amendment tabled by Mr. Iyyu.

Mr. P. K. Madhava Menon *(Narakkal):* Sir, I support this Amending Bill. If land tax is taken to be included as *michavaram* I am afraid there will be no land in Cochin State where the *michavaram* payable under a *kanam* document will be less than $\frac{1}{8}$ of the *pattam*. Under Section 28 of the original Act which gives the rate of renewal fee, it is said "nothing in the Section shall make the *kanam* tenant liable to pay as renewal fee anything more than 5 per cent of the *kanam* amount and *puramkadam*, if any, when there is no *michavaram* payable under the *kanam* to be renewed, or it is less than $12\frac{1}{2}$ per cent of the *pattam* fixed therein." If we look into the various cases, I doubt if we will find that there will not be a single case where land revenue is less than one-sixth of the *pattam*. Therefore, it is clear that if the tax is to be construed as a portion of *michavaram*, then this 5 per cent question will have no bearing on any document. There are several cases where the *kanam* amount amounts almost equal to the value of the land. If the tax is included in the *michavaram*, the *kanam* tenant will be forced to pay $27\frac{1}{2}$ per cent as renewal fee once in every 12 years. That is to say, if he has the option to purchase the land, it will be much cheaper for him. On the other hand, the land-owner will not care to sell the land, because, if he sells it, the value of the land sold will be only a little more than the *kanam* amount. The *kanam* tenant is also precluded from tendering the land back under Section 24, because, if he

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surrenders the *kanam* right, he is not entitled to get back the *kanam* amount or the *puramkadam* amount from the *jenmi*. Therefore it will be merely forcing the *kanam* tenant to pay some enhanced amount which he, in all consciousness, should not pay.

Deputy President: Are you supporting or opposing?

Mr. P. K. Madhava Menon *(Narakkal):* I already said that I am supporting the Bill. If in an old document, land tax was not separately mentioned, I can only assume that as a matter of convenience for payment of land revenue by the *jenmi*, the land-revenue was included in the amount stated as *pattam*. Therefore it appears to me only reasonable that the land revenue should be deducted from whatever amount is stated to be *pattam* in the previous document, when the tenant has to pay the land revenue direct to the Government.

With these observations, I support the Bill brought forward by my friend, the hon'ble member for Kunnamkulam.

*__Mr. E. Ikkanda Warriar__ *(Cheruthurthi):* Sir, the House is aware that in the old Tenancy Act, a provision was made for the payment of renewal fees at a flat rate of 27½ per cent. On a working of that Act, it was found subsequently that such a flat rate worked much hardship to the tenants. This flat rate of 27½ per cent was considered to be very hard with respect to a very large section of the *kanam* tenants. In order to give them some relief, some extreme cases were picked out and this provision of payment of 5 per cent of the *kanam* amount as renewal fee in cases where *michavaram* was less than 12½ per cent of the *kanapattam* was made. By the interpretation given to that provision by the High Court, it is very doubtful whether the benefit intended to be given to the kanam-tenants will reach the tenants. My submission is that it must have some reference to the income from the property. I say the renewal fee should be fixed at some proportion of the income from the property, so that it may not fall very heavily upon the tenant. If that is made so, then the question whether the principle that is sought to be made by the amending Bill will be a doubtful thing. At the same time, I do admit that some sort of relief is necessary. I therefore suggest that if the hon'ble member will have no objection, this Bill may be allowed to go to a Select Committee where they may be allowed to discuss the question in its various aspects. In the Malabar Tenancy Act, the renewal fee is fixed, I think, at 2¼ per cent of the fair rent of the property. Whatever that be, my submission here is that this Bill may be referred to a Select Committee to consider whether the renewal fee should or should not bear any proportion to

*Speech not corrected by the hon'ble member.

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the income from the property and such other matters. In that view, I support this Bill.

Mr. M. K. Devassy *(Adur):* Sir, the necessity of this Bill has been brought forth before the House and I think, I will not be justified in making any long speech at all. Apart from the correctness of the decision of the High Court, the only point for consideration is whether the advantage proposed to be given by the proviso to Section 28 of the Tenancy Act can be availed of by the tenants in the light of this Bill. The proviso says: "Nothing in this section shall make the kanam-tenant liable to pay as renewal fee anything more than 5 per cent of the *kanam* amount and *puram-kadam*, if any, when there is no *michavaram* payable under the *kanam* to be renewed, or it is less than 12½ per cent of the *pattam* fixed therein." By the High Court decision mentioned by my friend here, *i. e.*, to include the Government tax in the *michavaram*, the result is that not a single tenant will be able to take advantage of the proviso of Section 28 of the Act. So that the only alternative is either to delete the proviso or to accept this Bill. The ruling of the High Court defeats the very purpose of the proviso. The purpose of the Bill is to convert this section into a reality so that the tenants may take advantage of this provisio. I perfectly agree with the suggestion of Mr. Ekkanda Warriar to refer this Bill to the Select Committee although not for the reasons given by him. Those reasons may be considered on their merits in the Select Committee. I do admit that there is some defect in the drafting of the Bill. The explanation that is given there would have served this purpose. Whatever that may be, I submit this is a proper bill to be scrutinised by the Select Committee. With these few words, I support the Bill.

Mr. A. V. Moothedan *(Chalakkudi):* Are the Government opposing the Bill ?

Deputy President: Government had already opposed it.

Mr. M. K. Devassy *(Adur):* But when the Diwan Peishkar opposed the Bill the other day, I think he was not serious.

Mr. K. Achyuta Menon *(Diwan Peishkar):* I am always serious and I was serious then too. Last time I replied only to one speech. This time I will reply to the speeches. *(Laughter).*

Deputy President: The Diwan Peishkar had already spoken on the motion. If the Bill is introduced, then the hon'ble member can make the next motion.

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മിസ്റ്റർ സി. വി. ഇയ്യു: സർ, എനിക്കു ഇതിനെക്കുറിച്ചു് വളരെ അധികമൊന്നും പറയാനില്ല. മിസ്റ്റർ ഇക്കണ്ടവാര്യർ അഭിപ്രായപ്പെട്ട രീതിയിൽ തന്നെ റഫറൻസിനു വേണ്ടി സെലക്ററ്കമ്മിറ്റിക്കു ഈ ബിൽ അയക്കുന്നതിൽ എനിക്കു അഭിപ്രായവ്യത്യാസമില്ലാതില്ല. ചാത്തവകാശം നിർണ്ണയിക്കുന്നതോതു് അദ്ദേഹം പറഞ്ഞ രീതിയിലാണു് എക്കണോമിക്കലായിട്ടു നോക്കുമ്പോൾ വളരെ ശരിയാവുന്നതു് എന്ന അഭിപ്രായം എനിക്കുണ്ടു്. പക്ഷെ കുടിയാന്മാരുടെ കയ്യത്തെ വെച്ചുനോക്കുമ്പോൾ കീഴനടപ്പനുസരിച്ചു നടക്കുന്നതാണെന്ന അഭിപ്രായപ്പെട്ടകയും വലിയ കാണത്തെ സംബന്ധിച്ചിടത്തോളം ചാത്തവകാശത്തിന്റെ ശതമാനം കുറവു ചെയ്കയും ചെയ്യുന്നതിനോടാണു് ഞാൻ യോജിക്കുന്നതു്. മലബാർ കുടിയായ്മ അക്ടനുസരിച്ചു് ചാത്തവകാശം കൊടുക്കയാണെങ്കിൽ ചില ആളുകൾക്കു വളരെകഷ്ടപ്പാടുണ്ടാകും. എങ്കിലും അതിനേക്കാൾ വളരെ കഷ്ടത അനുഭവിക്കുന്നവരും കൂടുതൽ കാണസംഖ്യ കൊടുക്കുന്നവരുമായ കുടിയാന്മാരുടെ ഗുണത്തെ ഉദ്ദേശിച്ചാണു് ഞാൻ ഈ ബില്ലു കൊണ്ടുവന്നിട്ടുള്ളതു്. എതായാലും ഈ ബിൽ സെലക്ററ്കമ്മിറ്റിക്കു റഫർ ചെയ്യുന്നതിൽ അദ്ദേഹത്തിനു വിരോധമില്ലല്ലൊ. ഈ അഭിപ്രായത്തോടു കൂടി ഞാൻ ഈ ബിൽ സിലക്ററ് കമ്മിറ്റിക്കു് അയപ്പാൻ അവതരിപ്പിച്ചുകൊള്ളുന്നു.

Mr. K. Achyuta Menon *(Diwan Peishkar)*: Mr. President, Sir, I do not think a long speech is necessary to state the Government position. I have already made it clear that the Government cannot accept this Bill. The hon'ble members have pointed out that in the Regulation of 1090, "*michavaram*" was defined as the amount agreed to be paid to a land-lord by a tenant after deducting from the *pattam* the interest due on the *kanam* and that necessarily excluded the tax. They pointed out that *michavaram* under the old Act did not include tax; or at least they have assumed to be so.

The new Act of 1113 did make a deliberate change, in that, *michavaram* became the balance of money or produce which remained to be paid to the landlord after deducting from the *pattam* the interest due on the *kanam* amount and *puramkadam*, if any. The Hon'ble Member for Kattur argued that there are indications in the section itself to show that the intention of the legislature was to exclude tax from *michavaram*. He emphasised the words "periodically accruing due" and asked how can tax accrue periodically. He ignores the difference with reference to instalments. He said "*michavaram*" is payable twice in Kanni and Makaram and tax is payable only in one instalment. I maintain that tax is also payable periodically, but payable in a single instalment. Suppose there is a provision in the document that tax will be paid by the landlord. Can't you then say it is not a "periodically" due payment? Therefore the mere fact that the word "periodical" is there, will not solve the difficulty.

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Mr. A. V. Moothedan *(Chalakkudi):* Whatever may be the interpretation of the section in the Act of 1113, we say we want this change. Why should we waste our good time in these hollow arguments ?

Mr. K. Achyuta Menon *(Diwan Peishkar):* Why did he waste our time by these arguments then ?

Mr. K. R. Viswambharan *(Ezhuvas-Talappalli):* That is not a reason for the Diwan Peishkar to waste more time. *(Hear, hear).*

Mr. K. Achyuta Menon *(Diwan Peishkar):* There was a reference to the word "periodically" and a doubt was raised as to whether it can apply to tax or it can apply to *michavaram.* In reply, I state that it must apply to tax also and not merely to *michavaram.* A better argument was the other one, *viz.*, that arrears of *michavaram* was directed to be paid to the landlord and there was a separate provision that the arrears of tax also must be paid to the landlord. But I say no inference follows from that for this simple reason that there will be no arrears of tax, when the *Jenmi* would have paid it. Hence the necessity for separate recital.

Mr. Puthur Achyuta Menon *(Kattur):* Then why are there these two clauses ?

Mr. K. Achyuta Menon *(Diwan Peishkar):* The two provisions are made because tax would have been paid and would not remain as arrears. The tax would have been paid by the *jenmi* to save his property. Therefore to guard against that contingency, even though it is included in the *michavaram,* it is said, that arrears of *michavaram* still remaining due to the landlord and the arrears of tax both should be paid to the landlord.

Mr. K. R. Viswambharan *(Ezhuvas-Talappalli):* We admit the intelligence of the Diwan Peishkar.

Mr. K. Achyuta Menon *(Diwan Peishkar):* I am not upon the intelligence of the Diwan Peishkar or anybody else. This is the obvious reply. Then again, the mover himself has admitted in his Bill that it is closely modelled on the British Act.

Mr. C. V. Iyyu *(Kunnamkulam):* Not the whole Bill. Only the definition of "*michavaram*".

Mr. K. Achyuta Menon *(Diwan Peishkar):* Even the Tenancy Bill of 1113 is closely modelled on the Malabar Act. You find from the Malabar Act that these *kanams,* with high amounts do not get a benefit ; so that, I say the change here is deliberate. I recognise the legitimacy of the other contention that even though it is not in the British Act, we want it.

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Mr. K. R. Viswambharan *(Ezhuvas-Talappalli):* Are we not entitled to raise our arguments in this Legislature?

Mr. K. Achyuta Menon *(Diwan Peishkar):* Of course. That is, why I am replying to your arguments. Therefore the only question is whether we want a change. The Government's position is, there is no evidence of any necessity for a change of policy. The Bill is a departure from the British Act. You say the departure is necessary in view of the decision of our High Court. The existing Bill is also the result of the consideration by eminent members of the Bar, competent to pronounce an opinion on this matter.

The question is whether we have come to a stage now, when we should make an advance and make the renewal fee independent of the nature of the holding and of the nature of the land; whatever might be the nature of the *kanam* amount and so on. I say, there are dangers in such a step. Suppose the interest on the *kanam* amount is very high and the *kanam* amount is also high. The hon'ble members should take into consideration, the view point of the *jenmies*. Suppose the interest of the *kanam* amount is very high and somewhat in excess of the prevailing rate of interest. Even in that case, is it your contention that the *michavaram* should include tax? Then what about the *parambas*?

Mr. A. V. Moothedan *(Chalakkudi):* Those details can be examined in the Select Committee.

Mr. K. Achyuta Menon *(Diwan Peishkar):* That is the last desperate stand.

Mr. K. Ayyappan *(Ezhuvas-Kanayannur):* That is the last reasonable stand. *(Laughter).*

Mr. K. Achyuta Menon *(Diwan Peishkar):* Even though there is nothing in it. My submission therefore is, as the Bill now stands, it has to be opposed on principle.

Motion for introduction put and carried

Mr. C. V. Iyyu *(Kunnamkulam):* I move that the Bill be referred to a Select Committee consisting of Messrs. P. K. Madhava Menon, K. S. Panickar, P. Achyuta Menon, K. Ashtamurthi Nambudiripad, the Advocate-General, the Diwan Peishkar and the Mover.

Mr. M. K. Devassy *(Adur):* Mr. Ikkanda Warriar represented a particular point of view. I suggest that his name also may be included.

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Deputy President: If Mr. Ikkanda Warriar is also to be included, then the number of the Select Committee will become 8. The number should not go above 7.

Mr. M. K. Devassy *(Adur):* Then I would suggest to delete the name of Advocate-General.

Deputy President: The Advocate-General must necessarily be there.

Mr. C. V. Iyyu *(Kunnamkulam):* Then the Committee may consist of those whom I mentioned first.

Motion put and carried

Deputy President: The Diwan Peishkar will be the Chairman. The Committee will report within one month.

The House rose for lunch at 1 p.m. and re-assembled at 2-30 p.m. with the Deputy President in the Chair.

The Cochin Tenancy Act (Amendment) Bill

(Mr. V. J. Mathai)

Mr. V. J. Mathai *(Planters):* Sir, I do not think there is any necessity for moving the Cochin Tenancy Act Amendment Bill standing in my name since the Government has been pleased to enact legislation to bring about the purpose of my Bill, and since it has already been placed on the statute book. I will be failing in my duty if I do not make use of this opportunity to thank the Government for what it has done to the *panayamdars* and I should also thank all those who are responsible for piloting the Bill through this Council, especially the Government Secretary, the Advocate-General and the Diwan Peishkar. The thanks of the *panayam* tenants are due to them also. In view of the fact, therefore, that there is already an enactment on more or less the same lines as my Bill, I do not wish to introduce the Bill.

Bill withdrawn

The Cochin Tenancy Act (Amendment) Bill

Mr. M. K. Devassy *(Adur):* Sir, in view of the fact that most of the portions of my Bill are contained in the Cochin Cultivating *Verumpattam* Bill, I do not wish to introduce the Cochin Tenancy Amendment Bill.

Bill withdrawn

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